Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1993

ERIC ROBERT CORDERO,

Petitioner,

V.

THE STATE OF TEXAS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS FOR THE STATE OF TEXAS

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QUESTION PRESENTED

1. Whether the State of Texas violated Petitioner's rights to be free from unreasonable search and seizure. U.S. CONST. amends. IV, V, XIV.

LIST OF PARTIES

The parties to the proceedings below and in this Court are Petitioner **ERIC ROBERT CORDERO** and Respondent **THE STATE OF TEXAS**.

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ERIC ROBERT CORDERO,

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V.

THE STATE OF TEXAS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS FOR THE STATE OF TEXAS

The Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgments and Opinions of the

Court of Criminal Appeals and the Court of Appeals for the State of Texas entered in the above entitled proceeding.

OPINIONS BELOW

The Original Opinion of the Court of Appeals for the Second Judicial District of the State of Texas is attached hereto as Appendix "A".

Petitioner appealed the judgment of the Court of Appeals to the Court of Criminal Appeals on Discretionary Review. The Petition was refused.

JURISDICTION

On October 20, 1993, the Court of Criminal Appeals for the State of Texas refused Petitioner's Petition for Discretionary Review. This Court's jurisdiction is invoked pursuant to **28 U.S.C. sec. 1257.**

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. **U.S. CONST. amends. IV, V, XIV.**

STATEMENT OF THE CASE

This is an appeal by Petitioner from a conviction for unlawful, aggravated possession of marijuana in violation of the Texas Health & Safety Code. Petitioner was tried by the trial court on a plea of guilty and was found guilty as charged in the Indictment. Subsequently, pursuant to a plea bargain agreement, he was sentenced to eight (8) years confinement in the Institutional Division of the Texas Department of Criminal Justice. Prior to his entry of said plea of guilty, Petitioner presented his Motion to Suppress Evidence.

At the evidentiary hearing on Appellant's Motion to Suppress Evidence, Johnny Glass testified, on direct

examination by the State of Texas (hereinafter "the State"), that he is employed as a Sergeant in the Narcotics Division of the Denton County Sheriff's Office and was so employed on November 8, 1988. On said date, he stopped a vehicle driven by Appellant because of a traffic violation; to-wit: speeding. (R. II, 2-5). Glass said that he identified Appellant by his driver's license and issued him a "warning citation". (R. II, 7). He testified that Appellant said that he had driven a truck from Pennsylvania to Dallas for his Father and was returning to Pennsylvania in an vehicle he had recently purchased. (R. II, 9).[1] A passenger was in the vehicle with Appellant named Sabre Semenoff. Glass said that, after he spoke with Semenoff, he completed the warning citation, and gave Appellant back his driver's license. At that point, he said,

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[1]Glass testified that the paperwork produced by Appellant and Semenoff at the time they were stopped by Glass established that the car driven by Appellant had been purchased by him. (R. II, 9)

Appellant was "free to go". He further testified that, before Appellant left, Glass asked if he could search Appellant's car, though he reiterated Appellant was not under arrest or in custody. (R. II, 11). According to Glass, Appellant agreed, without threat or coercion, and thereafter, signed a "Permission to Search" form.[2] Afterwards, Glass searched the whole of the car, including the trunk and its contents: a duffel bag, two (2) suitcases, and a zipper bag. The bags and the luggage were closed, and he could not see through them. Again, he told the court that neither Appellant nor Semenoff were under arrest. (R. II, 14-16). When Glass opened the duffel bag and suitcases, he found marijuana and thereafter arrested Appellant and Semenoff. Subsequently, he Mirandized them, and they were transported to the Denton

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[2]The "Permission to Search" form has not been made a part of the appellate record. In pertinent part, however, its contents are recited at (R. II, 32, II, 3-12).

County Jail. (R. II, 17-18).

On cross-examination by Appellant, Glass testified that the driver's license given him by Appellant had expired. (R. II, 21). Thereafter, the following colloquy occurred:

> Q. Well, did it seem -- did the circumstance of the whole stop seem unusual to you, or was it just you giving a warning citation and it was over with, and everyone was free to go?
>
> A. It started out as a warning citation.
>
> Q. What turned it into something else?
>
> A. I had a reasonable suspicion to believe that a crime may have been committed or was in the process of being committed.
>
> Q. What formed that reasonable suspicion?
>
> A. Talking to Mr. Cordero and Mr. Semenoff.
>
> Q. Well, tell me specifically what was said to you when you formed a reasonable suspicion that a crime had been committed.
>
> A. Mr. Cordero stated that he had driven a truck from Pennsylvania to Dallas and dropped it off for his dad and that he was unemployed. But he had purchased a vehicle for $2,000.00 and was on his way back to

> Pennsylvania to sell that vehicle and try to make some money on it. And Mr. Semenoff had placed himself and Mr. Cordero flying into Dallas.
>
> Q. So based upon all that information, you had a reasonable suspicion that a crime had been committed. What crime did you believe had been committed?
> A. I had no earthly idea.
>
> Q. What did you suspect?
>
> A. I didn't suspect anything except that possibly a crime had been committed or was in the process of being committed.
>
> Q. What was the purpose of your search?
>
> A. To uncover evidence if there was some.
>
> Q. But you knew of no particular offense you were searching in regard to?
>
> A. It could have been any crime on the books.

(R. II, 25-27). He said Appellant seemed nervous and that, at the time he gave the "Permission to Search" form to Appellant to sign, **he did not tell Appellant that he suspected a crime had been or was being committed or that he was intending**

to search the car for evidence of any such criminal activity. (R. II, 27-28). His "reasonable suspicion" notwithstanding, he did not know if he performed a "pat down" search of Appellant and/or Semenoff for the protection of the police officers. Further, he maintained that Appellant and Semenoff were not in custody or under arrest and, therefore, were free to leave if they chose to do so. (R. II, 28-30). Glass reiterated that the duffel bag and luggage in the trunk of Appellant's vehicle were closed and that he could not see into them. He further stated that he did not secure any further permission from Appellant or Semenoff to search the interior of those items, because "my consent form includes that." (R. II, 31). Glass read from the "Permission to Search" form as follows:

> A. The above said officers further have my permission to take from my premises and property any letters, papers, materials or any other property or things which they desire as evidence for criminal prosecution in the

case or cases under investigation.

(R. II, 32).

Appellant was called to testify for the limited purpose of pursuing his Motion to Suppress Evidence. (R. III, 2). He said that, on November 8, 1988, at approximately 3:30 a.m., Glass stopped him driving the aforesaid vehicle. He was told by Glass that the stop was based on Glass' suspicion that the car driven by Appellant was stolen. Glass asked for Appellant's driver's license and vehicle registration papers, which were produced, and Appellant was told to step from his car. (R. III, 3).[3] Though Semenoff had produced the registration papers for the car, as requested, Glass said he still

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[3]Glass asked whether Appellant was a member of a "rock band". At the time of the stop on November 8th, Appellant was dressed casually, and his hair was long, i.e., not quite shoulder length. (R. III, 4) Appellant testified that Glass did not issue a warning citation to him at the scene of the stop/arrest, but he found one in his belongings when they were returned to him when he posted bond. (R. III, 5)

believed the car was stolen. (R. III, 4-5). According to Appellant, Glass said that Appellant was being detained for suspicion of auto theft and that Appellant needed to sign a document (i.e., the "Permission to Search" form) to enable Glass to determine if, in fact, Appellant owned the car. (R. III, 6). Glass never asked permission to open the duffle bag and luggage in the trunk of the car. (R. III, 7). In regard to the matter of detention/arrest, the following was said:

> Q. At the time that you were behind the car with him [Glass] about him suspecting the car was stolen, do you feel like you could have gotten in your car and left?
>
> A. No.
>
> Q. At the time that he opened the trunk and saw the packages, the bags and the duffel bag and the zipper bag, do you feel like you could have gotten -- closed the lid on the trunk, gotten back in the car and left?
>
> A. No, I don't.

(R. III, 7-8).

On cross-examination, Appellant said that Glass told

him that he had to sign the "Permission to Search" form, "because we're [the police] going to check out your car anyway. (R. III, 14).

REASON FOR GRANTING THE WRIT

THE COURT OF CRIMINAL APPEALS ERRED IN REFUSING PETITIONER'S PETITION FOR DISCRETIONARY REVIEW AND, THEREFORE, IN AFFIRMING THE OPINION OF THE COURT OF APPEALS AFFIRMING THE TRIAL COURT'S ACTION OVERRULING PETITIONER'S PRE-TRIAL MOTION TO SUPPRESS EVIDENCE.

REASON PRESENTED FOR REVIEW

Appellant's objection to the search of his vehicle and subsequent seizure of the contraband contained in the trunk was and is based on the Fourth and Fourteenth Amendments to the United States Constitution, **U.S. CONST. amends. IV,**

XIV. The basic purpose of those provisions is to safeguard the privacy and security of all persons against arbitrary invasion by governmental officials. See United States v. Jacobson, 104 S.Ct. 1652 (1984); United States v. Bazan, 807 F.2d 1200 (5th Cir.), cert. denied, 107 S.Ct. 1976 (1986); Schmerber v. California, 86 S.Ct. 1826 (1966).

(A) DID THE ACTIONS OF GLASS CONSTITUTE A SEARCH?

A search is an intrusion into an area in which the aggrieved person has a reasonable expectation of privacy. Katz v. United States, 88 S.Ct. 507 (1967); Smith v. Maryland, 99 S.Ct. 2577 (1979); United States v. Jacobson, 104 S.Ct. 1652 (1984).

For example, it is clear that a person has a legitimate expectation of privacy in his/her automobile except as to items

or material in plain view. Cardwell v. Lewis, 94 S.Ct. 2464 (1974). The duffel bag and luggage being contained in the trunk of Appellant's car, the action by Glass clearly constituted a search.

(B) WAS THE SEARCH BY GLASS LAWFUL?

(1) Review of Applicable Law.

It is axiomatic that a governmental search may not occur unless: (1) performed pursuant to a warrant based on probable cause; or (2) absent a valid warrant, the search falls into one of several clearly defined categories in which warrantless searches are allowed:

(a) **Search Incident to Lawful Arrest.** Chimel v. California, 89 S.Ct. 2034 (1969); New York v. Belton, 101 S.Ct. 2860 (1981) (a search of the passenger compartment of an automobile is permissible when the driver is legally arrested).

(b) **Inventory Search after Valid Arrest.** South Dakota v. Opperman, **96 S.Ct. 3092 (1976).**

(c) **Emergency Situations/Assistance.** Johnson v. United States, **68 S.Ct. 367 (1978);** Michigan v. Tyler, **98 S.Ct. 1942 (1978).**

(d) **Automobile Exception.** Chambers v. Maroney, **90 S.Ct. 1975 (1970).**

(e) **Consent Searches.** Schneckloth v. Bustamonte, **93 S.Ct. 2041 (1973).**

In Florida v. Jimeno, **111 S.Ct. 1801 (1991),** this Court considered whether the scope of a consent to search extends to all areas, including closed containers. The standard for measuring the scope of a suspect's consent is that of "objective reasonableness": what would the typical reasonable person have understood by the exchange between the officer and the suspect? Scope of consent is also limited by its expressed object. **Here, the Court emphasized that the**

officer informed the accused that he suspected there were drugs in the car. Id. Cf. Florida v. Wells, 110 S.Ct. 1639 (1990)(It is unreasonable to believe that a suspect, by consenting to the search of his trunk, had agreed to the breaking open of a locked briefcase therein. Id. Not so, however, if the object was a paper bag; but see Marshall, J., dissenting: [a]pparently, the majority's real concern is that if the police were required to ask for additional consent to search a closed container found during the consensual search of an automobile, an individual who did not mean to authorize such additional searching would have an opportunity to say so. In essence, then, the majority is claiming that 'the community has a real interest' not in encouraging citizens to consent to investigatory efforts of their law enforcement agents, but rather in encouraging individuals to be duped by them.").

(2) Analysis of Law and Fact.

As stated above, the search in the case at bar was

performed absent a warrant. Thus, attention must be directed to the exceptions to the warrant requirement discussed above.

(a) Search Incident to Lawful Arrest.

This exception may be disposed of with great brevity. Glass repeatedly testified that, until after he had searched the contents of Appellant's trunk, including the duffle bag and luggage, and had found what he believed was marijuana, Appellant was not under arrest. (R. II, 11, 16, 17). Thus, the State may not maintain that the search of the trunk and its contents were incident to the arrest of Appellant.

(b) Inventory Search after Valid Arrest.

This exception may likewise be disposed of with nearly equal brevity. According to Glass, Appellant was not under arrest at the time of the search. (R. II, 11, 16, 17). Thus, the State may not claim that the contraband was found as the result of an inventory.

(c) Emergency Situations/Assistance.

The case at bar clearly does not present a factual situation in which this exception arises.

(d) Automobile Exception.

The record shows that Glass did not have probable cause to believe that Appellant's vehicle contained evidence of a crime. Glass testified unequivocally that he had a "reasonable suspicion to believe that a crime may have been committed or was in the process of being committed." (R. II, 25). Nothing more. He had "no earthly idea" what offense, if any, had been or was being committed. He did not even suspect the commission of any **particular** offense. Instead, the purpose of his search was to "uncover evidence if there was some." (R. II, 26). Thus, the State may not rely upon the "Automobile Exception" to establish the legality of the search in question. **Chambers v. Maroney, 90 S.Ct. 1975 (1970).**

(e) Consent.

It is undisputed that Appellant executed a form called

"Permission to Search"[4] after he had been detained by Glass. Several factors are present, however, that vitiate the consent:

> (1) It was not voluntarily given, i.e., it was the result of coercion. Schneckloth v. Bustamonte, 93 S.Ct. 2041 (1973); and
>
> (2) The search performed by Glass exceeded the scope of the consent given by Appellant. Florida v. Jimeno, 111 S.Ct. 1801 (1991); Florida v. Wells, 110 S.Ct. 1639 (1990).

(A) WAS THE CONSENT TO SEARCH GIVEN VOLUNTARILY?

It is clear that a person may waive his or her right to be free from a warrantless search by intelligently and knowingly consenting to it. Schneckloth v. Bustamonte, 93 S.Ct. 2041 (1973). Where a challenge is made to a consent to search, the State must prove by clear and convincing evidence that it was freely, voluntarily, knowingly, and intelligently

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[4]See note 2 **supra** and related text.

given. Id.; Bumper v. North Carolina, 88 S.Ct. 1788 (1968).

(1) Was Appellant in Custody or Under Arrest at the Time of the Consent?

This issue is important, because it bears directly upon the voluntariness of the "Permission to Search". If Appellant was detained/in custody/arrested, the law requires that he be Mirandized before custodial interrogation occurs.[5] Miranda v. Arizona, 86 S.Ct. 1602 (1966). Otherwise, any statements made by him, including the execution of a consent to search, are involuntary and should be suppressed. Mapp v. Ohio, 81 S.Ct. 1684 (1961). Likewise, fruits flowing from such involuntary consent must be suppressed. Wong Sun v. United

[5]Appellant asserts that Glass' request for consent to search Appellant's vehicle constitutes interrogation. Thus, the issue is whether it was custodial.

States, 83 S.Ct. 407 (1963), Glass repeatedly interjected that neither Appellant nor Semenoff was arrested or in custody until the consent to search had been executed and the contraband discovered in the trunk. (R. II, 11-16). Logic, common sense, and the law, however, require a contrary conclusion.

An arrest occurs when a person's liberty of movement is restricted or restrained. Whether the arresting officer reads the suspect his constitutional rights or subjectively considers him to be or not be to under arrest is not necessarily controlling.

Viewing the evidence in the light most favorable to the State, i.e., disregarding the testimony of Appellant, the record shows that Appellant had been detained by Glass for speeding,

(R. II, 4),[6] and asked to step out of his car and move to the rear of the vehicle. (R. II, 5-6). Glass identified Appellant by his driver's license (which was expired) and, according to him, issued Appellant a warning citation. (R. II, 7).

During that same time period, Glass was questioning Appellant about his activities, and Glass' partner was questioning Semenoff. (R. II, 8-10). It was as the result of said questioning that Glass said he formed his "reasonable suspicion" that a crime had been committed or was being committed. (R. II, 25). It is absolutely bizarre to believe that, under the aforesaid circumstances, Appellant's liberty was not restricted or restrained, regardless of Glass' comments to the contrary.

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[6]Appellant said that Glass told him he was under suspicion in regard to a stolen automobile. (R. III, 6). Glass did not admit or deny that fact, but said that he did not recall it. (R. II, 21).

(2) Assuming that Appellant was in Custody, was the Consent to Search Legally Obtained?

The law, however, is clear that the simple fact of arrest does not inherently preclude the giving of a voluntary consent to search. **Brown v. Illinois, 95 S.Ct. 2254 (1975).** Here, Appellant was detained/in custody/arrested, unwarned about his right to refuse to give the "Permission to Search", and uninformed of his **Miranda** rights prior to the request for the consent being made and it being given. The "Permission to Search", therefore, was not knowingly, intelligently, and voluntarily given by Appellant or taken by Glass. Thus, all fruits flowing therefrom; to-wit: the marijuana made the subject of the Indictment herein, should be, and should have been, suppressed. **Wong Sun v. United States, 83 S.Ct. 407 (1963).** Thus, the trial court erred in denying Appellant's Motion to Suppress Evidence, and the Texas appellate courts likewise erred in affirming its ruling.

(B) DID GLASS' SEARCH EXCEED THE SCOPE OF THE CONSENT?

Appellant contends that the "Permission to Search", alone, as quoted above, see p. 5, supra, and (R. II, 32), did not authorize Glass to search the contents of the duffle bag and luggage found in the trunk of Appellant's vehicle. In **Florida v. Jimeno, 111 S.Ct. 1801 (1991)**, the Supreme Court noted that, when the defendant was stopped for an illegal turn, **the police suspected him of distributing drugs**. Thus, the Court concluded that it was objectively reasonable for the police to conclude that the general consent to search given them by the defendant included the consent to search containers within the car **that might contain drugs**. The Court also emphasized that the police officer told the defendant that he suspected there were drugs in the defendant's car. **Id.**

That is utterly not the case at bar. Here, Glass said he had no idea what he was looking for or what crime he

suspected had been or was being committed; rather, his purpose was "to uncover evidence if there was some." Glass was merely on a fishing expedition. Moreover, he told Appellant nothing about his suspicions or his expressed purpose of the search. (R. II, 25-26; III, 6-7). Finally, he did not ask permission to open the duffle bag and luggage found in the trunk of the car. (R. II, 31).

This case is analogous to **Florida v. Wells, 110 S.Ct. 1639 (1990)**, where this Court found it was unreasonable to believe that a suspect, by consenting to a search of the trunk of his vehicle, had agreed to the police opening a locked briefcase therein. **Id.** Therefore, even assuming the "Permission to Search" was given Glass voluntarily, his search of the duffle bag and luggage exceeded the scope of consent, the contraband was illegally seized, and evidence thereof should be suppressed. Thus, the trial court erred in denying Appellant's Motion to Suppress Evidence.

HARM ANALYSIS

If the trial court had granted Appellant's Motion to Suppress Evidence and, therefore, not erred as set forth above, all evidence of the contraband seized from the duffle bag and luggage in Appellant's trunk would have been suppressed and, therefore, would have been inadmissible. Absent such evidence, the State would have been faced with an insurmountable sufficiency of evidence problem, and Appellant would not have entered a plea of guilty pursuant to the plea bargain agreement discussed above. Thus, harm in the trial court's error is manifest and may not be harmless beyond a reasonable doubt. Chapman v. California, 87 S.Ct. 824 (1967).

CONCLUSION

WHEREFORE, Petitioner respectfully prays that this Petition for Writ of Certiorari be, in all things, granted.

Respectfully submitted,

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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Petition has been forwarded to the District Attorney of Denton County, the Hon. Robert Huttash, State Prosecuting Attorney, P.O. Box 12405, Austin, Texas, 78711, and to the Solicitor General, U.S. Department of Justice, Washington, DC, 20530.

SIGNED this the _____ day of _____, 199_____.

_____
KEITH E. JAGMIN

NO. 2-92-021-CR

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

ERIC ROBERT CORDERO — APPELLANT

VS.

THE STATE OF TEXAS — STATE

FROM THE 363ND DISTRICT COURT
OF DENTON COUNTY

OPINION

Eric Robert Cordero appeals from his conviction for the offense of aggravated possession of marihuana following his plea of guilty to the court. The court assessed him punishment at eight years in the Texas Department of Criminal Justice, Institutional Division. Cordero asserts in a single point of error that the trial court erred in overruling his pretrial motion to suppress.

"A"

We affirm because we hold that the trial court's determination that Cordero consented to the search of his vehicle and the contents of his suitcase and that his consent was freely and voluntarily given is supported by the record.

Cordero authorized officers to search his vehicle after he was stopped for a traffic offense. He does not challenge the legality of the traffic stop.

Whether a consent to search was freely and voluntarily given is a question of fact to be determined by the trial court on the basis of the totality of circumstances of the case. Rice v. State, 548 S.W.2d 725, 728 (Tex. Crim. App. 1977); Davis v. State, 657 S.W.2d 17, 19 (Tex. App. -- Fort Worth 1983, pet. ref'd.). We will not overturn this cause on appeal if the trial court's determination is supported by the record. Davis, 657 S.W.2d at 19.

Sergeant Johnny Glass of the Denton County Sheriff's Department testified that after stopping Cordero for a traffic offense he issued him a warning citation. He indicated that Cordero was then free to go. At that time the officer, suspecting that Cordero might be guilty of some offense, asked Cordero for

permission to search his vehicle. He did not tell him of his right to refuse to consent to the search. Cordero signed a consent form authorizing Sergeant Glass and another officer to search his vehicle. The form authorized the officers to take from his premises and property any letters, papers, materials, or any other property or things which they might desire as evidence for criminal prosecution in "the case or cases under investigation." The form indicated that the consent was given voluntarily and without any threats or promises of any kind.

When Sergeant Glass opened the trunk of the vehicle, he found two suitcases, a duffel bag, and a zipper bag. He held up the two suitcases and the zipper bag and asked to whom each belonged. Cordero stated that the zipper bag and a suitcase were his. Sergeant Glass found marihuana in Cordero's suitcases.

Cordero's version of the facts was quite different. He testified that Sergeant Glass told him that he stopped him because he thought his car was stolen. He said that Sergeant Glass told him that he needed to sign the consent form to enable the officer to determine if he really owned the car. Additionally, he said that

Sergeant Glass told him he had to sign the form because they were going to check out his car anyway. He said that he never felt that he was free to go. He indicated that Sergeant Glass did not issue him a warning citation at the scene of the stop, but that he found one in his belongings when he posted bond.

Although the testimony was conflicting, we hold that there was support in the record for the trial court to determine from the totality of the circumstances that Cordero's consent to the search was freely and voluntarily given.

Cordero argues that he was under arrest when the consent to search was given. We hold that the trial court was free to believe Sergeant Glass' testimony that Cordero was free to leave after the officer gave him the warning ticket.

Cordero also contends that Sergeant Glass' search of his suitcase and the other closed containers located in the trunk exceeded the scope of his consent. Corder relies on the case of Florida v. Wells, 495 U.S. 1, 4, 110 S.Ct. 1632, 1639, 109 L.Ed. 2d 1, 6-7 (1990). We find that case to be distinguishable. First, we note that at the Supreme Court level in that case there was no issue

of a consent to search. The opinion in that case dealt only with the Florida Highway Patrol's lack of a policy with respect to the opening of closed containers during an inventory search. The case at bar did not involve n inventory search. Consequently, Florida v. Wells has no application to this case.

The Florida Supreme Court, in State v. Wells, 539 So. 2d 464 (Fla. 1989) (per curiam) held that Wells' oral consent to search the trunk of his car did not authorize the Florida Highway Patrol to search a locked briefcase within the trunk. In the case at bar, Cordero gave a written consent that was broader than the oral consent by Wells. Additionally, Cordero's suitcase was not locked. We overrule Cordero's sole point of error.

The judgment is affirmed.

/S/ JOHN HILL
JOHN HILL
CHIEF JUSTICE

PANEL B
HILL, C.J.; FARRIS AND DAY, JJ
PUBLISH

APR 28 1993